Supreme Court U.S.
FILED
MAY 10 1995
CLERK

NO. 94-1677

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JACK LEHTINEN AND
CAROLYN L. LEHTINEN

Petitioners,

v.

KEITH T. HARSTAD,

Respondent.

On Petition for Writ of Certiorari to the
Minnesota Supreme Court

BRIEF IN OPPOSITION

John M. Koneck
Joseph G. Springer
Counsel of Record
Fredrikson & Byron, P.A.
1100 International Centre
900 Second Avenue South
Minneapolis, MN 55402
(612) 347-7000
Counsel for Respondents

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

Whether the Minnesota State Courts deprived Petitioners of their due process rights by divesting Petitioners of their right to certain real property after seven years of litigation between the parties.

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Petitioners,

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BRIEF IN OPPOSITION

Respondent Keith T. Harstad respectfully requests that this Court deny the petition for writ of certiorari seeking review of the opinion of the Minnesota Supreme

Court below. Respondent commenced this action in January, 1988 seeking specific performance of a Purchase Agreement for Petitioner to transfer certain real property to Respondent. The trial court granted Respondent specific performance of the Purchase Agreement, but Petitioners refused to close. Consequently, the Court enforced its previous judgment by divesting Petitioners of their interest in the property pursuant to Minn.R.Civ.P. 70. Petitioners now seek review of the order divesting them of title to the property.[1] In the words of the trial court judge below, "it is this Court's advice that the parties complete this transaction and go about their lives." Petitioners' Appendix ("P.App.") at A-36.

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[1]Petitioners also appealed the judgment granting Respondent specific performance of the Purchase Agreement. See Harstad v. Lehtinen, No. CO-91-723 (Minn.Ct.App. Nov. 26, 1991), pet. for rev. denied (Minn. Jan. 27, 1992). Respondent's Appendix ("R.App.") at 1. Petitioner never sought certiorari from such decision.

JURISDICTION AS ALLEGED BY PETITIONER

On December 14, 1993, the District Court for the First Judicial District, State of Minnesota, entered an order divesting Petitioners of title to the property and vesting fee simple title to the property in Respondent. This Order was entered as a judgment on January 5, 1994. The Minnesota Court of Appeals affirmed such judgment by unpublished opinion dated November 15, 1994. P.App. at A-36. The Minnesota Supreme Court denied Petitioners' petition for further review by Order dated January 13, 1995. P.App. at A-41. Petitioners then brought a petition for rehearing before the Minnesota Supreme Court, which was denied by Order dated January 31, 1995. P.App. at A-42.

Petitioners seek to invoke jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION, STATUTE, AND RULE INVOLVED

U.S.Const.amend. XIV, § 1, provides that "[n]or shall any State deprive any person of . . . property, without due process of law."

28 U.S.C. § 1257(a) provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specifically set up or claimed under the constitution . . .

Minn.R.Civ.P. 70 provides:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party . . . If real or personal property is within the state, the court, in lieu of directing a conveyance thereof, may enter a judgment divesting the title of any party and vesting it in others; and such judgment has the effect

of a conveyance executed in due form of law . . .

STATEMENT OF THE CASE

In 1987, Respondent Keith T. Harstad ("Harstad" or "Respondent") entered into a Purchase Agreement ("Purchase Agreement") for Respondents Jack and Carolyn Lehtinen (the "Lehtinens" or "Petitioners") to convey certain real property located in Minnesota (the "Property"). Harstad objected to the title to the Property and the Lehtinens refused to take any action to cure the title defects. Consequently, in 1988, Harstad commenced this action seeking specific performance of the Purchase Agreement (the "Specific Performance Action"). After a trial, the trial court entered an Order dated February 15, 1991, concluding that the Purchase Agreement was valid and enforceable, and granting Harstad specific performance of the Purchase Agreement. P.App. at A-1. The Court further directed Harstad's counsel to cure the title defect to

the Property and to charge the cost of such action to the Lehtinens because of their failure to perform pursuant to the Purchase Agreement.[2]

Pursuant to the February 15, 1991 Order, Harstad commenced a separate action in the name of the Lehtinens to clear the title to the Property (the "Adverse Claims Action"). By Findings of Fact, Conclusions of Law, and Order for Judgment and Judgment filed March 15, 1993, the trial court for the Adverse Claims Action quieted title in the name of the Lehtinens, subject only to the interest of Harstad under the Purchase Agreement. P.App. at A-19. Thereafter, the Lehtinens made several motions attacking the validity of the trial court's order in the Adverse Claims Action, each of which were denied by the trial court.

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[2]Petitioner also appealed from this initial order and resulting judgment in the Specific Performance Action. The Minnesota Court of Appeals affirmed, and Petitioners did not petition this court for a writ of certiorari. See Harstad v. Lehtinen, No. CO-91-723 (Minn.Ct.App. Nov. 26, 1991, pet.for rev. denied (Minn. Jan. 27, 1992). R.App. at 1.

However, Petitioners never appealed from any judgment or order in the Adverse Claims Action.

After Petitioners failed to appear at the scheduled closing, the trial court in the Specific Performance Action entered an Order pursuant to Minn.R.Civ.P. 70 divesting Petitioners of title to the Property and vesting title in Respondent. P.App. at A-30. Petitioner appealed this decision, and the Minnesota Court of Appeals affirmed. Harstad v. Lehtinen No. C4-94-707 (Minn.Ct.App. Nov. 15, 1994). P.App. at A-36. By Order dated January 13, 1995, the Minnesota Supreme Court denied the Lehtinens' petition for further review. P.App. at A-41. The Lehtinens then petitioned the Minnesota Supreme Court for rehearing, which the Minnesota Supreme Court denied by Order dated January 31, 1995. P.App. at A-42.

REASONS FOR DENYING THE PETITION

I. Issues Raised by Petitioner Concerning Marketability of Title and the Propriety of the Order Granting Specific Performance are not Properly Before this Court.

Petitioners attempt to raise several issues regarding the marketability of title to the Property. Petitioners, however, did not appeal from the judgment in the Adverse Claims Action, which concluded that title to the Property was marketable. See Order dated March 12, 1993 and Judgment dated March 15, 1993, P.App. at A-19 to A-26. Consequently, Petitioners' attempt to have such issues reviewed in this court are untimely and barred by the doctrine of res judicata. See Minn.R.Civ. App.P. 104.01 (judgments must be appealed within ninety days after entry and orders must be appealed within thirty days after entry); Scott-Peabody & Assoc. v. Northern Leasing Corp., 273 Minn. 236, 239, 140 N.W.2d 614, 616 (1966) (judgment

in a quiet title action is res judicata as to the parties and their privies).

Similarly, Petitioners seek review of the judgment ordering them to specifically perform the Purchase Agreement. The Minnesota appellate courts affirmed the judgment granting specific performance in Petitioners' previous appeal. See Harstad v. Lehtinen, No. CO-91-723 (Minn.Ct. App. Nov. 26, 1991), pet. for rev. denied (Minn. Jan. 27, 1992), R.App. at p. 1. Petitioners never sought a writ of certiorari for such decisions. Again, Petitioners' attempt to question the propriety of the judgment granting specific performance is untimely and barred by res judicata. See Supreme Court Rule 13.1 (Petition for a writ of certiorari to review a judgment entered by a state court of last resort must be filed with the Clerk of the U.S. Supreme Court within ninety days after the entry of the judgment); Kaiser v. Northern States Power Co., 353 N.W.2d 899, 902 (Minn. 1984) (a right

distinctly put into issue and directly determined by a court cannot later be disputed by the same parties).

Thus, the only issues properly before this Court are the three issues decided by the trial court in its January 5, 1994 judgment -- the court's authority to divest the Lehtinens of title to the Property pursuant to Minn.R.Civ.P. 70, the date on which title to the Property became marketable, and the proper manner of payment at closing. P.App. at A-32, A-38.

II. Certiorari is Improper as Petitioner for the First Time is Raising Federal Questions Before this Court.

Supreme Court Rule 14.01(h) provides as follows:

> If review of a judgment of a state court is sought, the statementof the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places

> in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

The Lehtinens base their petition on an alleged deprivation of their right to due process. Petition at p.1. However, the petition entirely fails to specify the stage in the proceedings at which the Lehtinens raised their due process claims and the way in which they were passed upon by the Minnesota state courts. This omission is for one simple reason -- Lehtinens are raising their due process claim for the first time in their petition. As a result, the petition must be denied. Id. See also Supreme Court Rule 14.5 (Petitioners' failure to present whatever is essential to consideration of the petition will be a sufficient reason for denying the petition).

III. The Petition Must be Denied as Petitioners Fail to Raise a Substantial Federal Question.

It has long been held that this Court will not grant certiorari unless Petitioner presents a substantial federal question:

> the bare averment of a federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.

City of New Orleans v. New Orleans Water-Works Co., 142 U.S. 79, 87, 12 S.Ct. 142, 145, 35 L.Ed. 943 (1891). See also Black v. Cutter Laboratories, 351 U.S. 292, 299, 76 S.Ct. 824, 828, 100 L.Ed. 1188 (1956) (construction of a local contract under local law does not raise a substantial federal question). Petitioners claim that the State of Minnesota deprived them of their Fourteenth Amendment right to due process by divesting Petitioners of their

interest in the Property pursuant to Minn.R.Civ.P. 70, which provides

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party . . . If real or personal property is within the state, the court, in lieu of directing a conveyance thereof, may enter a judgment divesting the title of any party and vesting it in others; and such judgment has the effect of a conveyance executed in due form of law . . .[3]

After a full trial on the merits, the trial court determined that the Purchase Agreement was valid and binding, and ordered Petitioners to specifically perform under such agreement. Petitioners appealed such order, and the Minnesota Appellate Courts affirmed.

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[3]Minn.R.Civ.P. 70 contains the same language as Fed.R.Civ.P. 70.

Nevertheless, Petitioners still failed to close on the sale of the Property to Respondent. Consequently, the Court judicially divested Petitioners of their interest in the property pursuant to Minn.R.Civ.P. 70. Under Petitioners' analysis, certiorari would be proper in every case in which a state or federal court utilizes the provisions of Fed.R.Civ.P. 70 or its state equivalent. Such action certainly cannot present a "substantial" federal question as is required for this Court to grant certiorari.

IV. The Minnesota Court's Decisions are Based Upon an Adequate State Ground.

To preserve federalism, this Court will not exercise jurisdiction to review state court judgments resting upon adequate non-federal grounds:

> This Court from the time of its foundation has adhered to the principal that it will not review judgments of state courts that rest on adequate and independent state grounds.

Herb v. Pitcairn, 324 U.S. 117, 125, 65 S.Ct. 459, 89 L.Ed. 789 (1954). See also Black v. Cutter Laboratories,

351 U.S. 292, 299, 76 S.Ct. 824, 828, 100 L.Ed. 1188 (1956) (Construction of a local contract under local law presents no substantial federal question). This case involves the breach of a contract to convey real property and therefore is governed by state contract and real property law. Indeed, the trial court and the Minnesota Appellate Courts decided this matter entirely upon state law. P.App. at A-30 to A-40. Consequently, certiorari is improper.

V. Petitioners Received Due Process.

Petitioners' claim that they were not given due process is entirely without merit. The trial court ordered Petitioners to specifically perform the Purchase Agreement after a full trial on the merits. Petitioners appealed this decision and the Minnesota Appellate Courts affirmed. Because Petitioners still refused to close on the sale of the Property, the trial court divested Petitioners of their interest in the Property, with notice to Petitioners and an

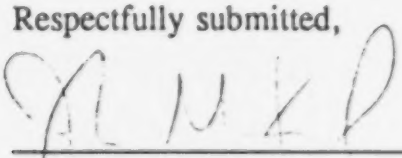
opportunity to be heard. This Order resulted in another appeal through the Minnesota Appellate Courts. Under the circumstances, Petitioners' claim that they were not afforded due process is without merit.

This case was commenced over seven years ago. It is time for the parties to go about their lives.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,



John M. Koneck
Joseph G. Springer
Counsel of Record
Fredrikson & Byron, P.A.
1100 International Centre
900 Second Avenue South
Minneapolis, MN 55402
Telephone: (612) 347-7000
Facsimile: (612) 347-7077

Attorneys for Respondent

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1990)

STATE OF MINNESOTA

IN COURT OF APPEALS

C0-91-723

Dakota County
District Court File No.: C5-88-105868

Short, Judge

Keith T. Harstad,

Appellant,

John T. Finley
700 St. Paul Building
6 West Fifth Street
St. Paul, MN 55102

vs.

Jack Lehtinen, et al.,

Respondents.

Susan E. Broin
828 Holly Avenue
St. Paul, MN 55104

Filed: November 26, 1991
Office of Appellate Courts

Considered and decided by Short, Presiding Judge, Randall, Judge, and Lommen, Judge.

UNPUBLISHED OPINION

SHORT, Judge

This matter involves a dispute over the contract terms for the sale of real estate. After a bench trial, the court held (1) the buyer was entitled to specific performance and (2) the seller must cooperate in the buyer's efforts to clear title. Neither party is satisfied with the trial court's findings of fact and conclusions of law. On appeal, Keith Harstad (buyer) argues the trial court erred by shifting the obligation to clear title objections. Jack and Carolyn Lehtinen (sellers) cross appeal and argue the trial court erred in

ordering specific performance because the contract was void. We disagree with both parties and affirm.

DECISION

The findings of a trial court, sitting without a jury, are entitled to the same weight on review as a jury verdict. Rehberger v. Project Plumbing Co., 295 Minn. 577, 578, 205 N.W.2d 126, 127 (1973). Our review is limited to determining whether the trial court's findings are clearly erroneous. A trial court's findings will be reversed only if, upon review of the entire record, we are left with the definite and firm conviction that a mistake has been made. Gjovik v. Strope, 401 N.W.2d 664, 667 (Minn. 1987). This standard also applies to findings based on documentary evidence. Minn. R. Civ. P. 52.01.

I.

The relevant language in the purchase agreement states:

> If said title is not marketable and not made so within 120 days after the date of written objections thereto as above provided, this agreement shall be void, and neither principal shall be liable for damages hereunder to the other principal.

Seller argues the contract is void by its terms because the title could not be made marketable in the 120 day period. We disagree. A title clearing provision does not operate to void an otherwise valid contract where the seller fails to make good faith efforts to preserve title. Space Center, Inc. v. 451 Corp., 298 N.W.2d 443, 450 (Minn. 1980).

The trial court's findings are supported by ample evidence. The record demonstrates (a) the seller refused to undertake any efforts to clear

title during the 120 day period. (b) the title could have been made marketable through an adverse claims proceeding. (c) the purchase agreement is a valid and enforceable contract between the parties. (d) the terms of the parties' contract are fair and supported by adequate consideration. and (e) enforcement of the contract will not cause either party undue hardship. Under these facts. we cannot say the trial court abused its discretion in ordering specific performance. See Johnson v. Johnson. 272 Minn. 284. 292. 137 N.W.2d 840. 847 (1965) (setting forth five part test used to determine whether specific performance is appropriate).

II.

In awarding specific performance. a trial court may make necessary adjustments which do not alter the substance of the contract. Friede v. Pool. 217 Minn. 332. 335. 14 N.W.2d 454. 456 (1944). A trial court's determination regarding reformation will not be disturbed on appeal unless it is manifestly contrary to the evidence. Nolan v. Stuebner. 429 N.W.2d 918. 923 (Minn. App. 1988). pet. for rev. denied (Minn. Dec. 16. 1988).

The trial court reformed the parties' agreement by creatively shifting the obligation to clear title objections to the buyer. Neither party is satisfied. However. the impediment to the completion of the contract for deed was the seller's failure to clear title. The trial court facilitated performance under the contract by (a) requiring the buyer to clear title at the seller's expense. (b) extending the time period to 120 days from judgment. and (c) adjusting the closing date for the final balloon payment to

30 days after title is made marketable. We cannot say the trial court's adjustments to the parties' contract were manifestly contrary to the evidence.

Affirmed.

1-14-91 Marvin D. Shaw

STATE OF MINNESOTA

IN SUPREME COURT

C0-91-723

OFFICE OF
APPELLATE COURTS

JAN 27 1992

FILED

Keith T. Harstad,

Appellant,

vs.

Jack Lehtinen, et al.,

Respondents.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jack Lehtinen for further review be, and the same is, denied.

Dated: January 27, 1992

BY THE COURT:

Chief Justice